

REMARKS

Applicant has carefully studied the outstanding Official Action. The present amendment is intended to be fully responsive to all points of rejection and is believed to place the application in condition for allowance. Favorable reconsideration and allowance of the present application are hereby respectfully requested.

Claims 1 - 23, 72 - 84, 92, 95 - 97, 99 - 101, 106, 107, 108 and 110 are pending in the present application.

Claims 1 - 23, 72 - 84, 92, 95 - 97, 99 - 101, 106, 107, 108 and 110 have been subjected to a restriction requirement under 35 USC 121 and 35 USC 372. Two groups of inventions have been identified:

I. Claims 1 - 23, 72 - 84, 92, 95 - 97, 99 - 101, 106, 107, 108 and 110, drawn to an advertising control method and apparatuses for receiving an advertisement identification message (AIM) at a first mobile device, and so forth, as enumerated in the office action; and

II. Claims 72, 95, and 106 drawn to an AIM distribution terminal, means therefor, and a method for receiving AIMs from a distributing authority, and so forth, as enumerated in the office action.

Applicant hereby provisionally elects Group I, claims 1 - 23, 72 - 84, 92, 95 - 97, 99 - 101, 106, 107, 108 and 110, and accordingly provisionally withdraws claims 72, 95, and 106.

The provisional election of Group I is made with traverse.

The grounds for the traversal of the restriction requirement are as follows. The present application has already been subject to an earlier restriction action mailed 2 April 2009, and an office action on the merits, rejecting all of the then elected claims 1 - 23, 72 - 84, 92, 95 - 97, 99 - 101, 106, 107, 108 and 110.

The restriction action, in citing 37 CFR 1.142(a) second sentence, and referring to MPEP 811 notes that "Here, there will be a serious burden if further restriction is not required."

In that all of the claims have already been examined and rejected over the references cited, Applicant respectfully points out that no serious burden can exist since all claims have already been examined (see MPEP 803: "If the search and examination of all the claims in an application can be made without serious burden, the examiner must examine them on the merits, even though they include claims to independent or distinct inventions" emphasis added). Secondly, the outstanding rejection of all claims has not been withdrawn, in spite of Applicant's response to the Office Action mailed on 2 April 2009. Accordingly, an assertion that the claims define patentably independent or distinct groups of inventions contradicts the existence of the rejections of all claims based upon the references cited in the aforementioned office action, particularly since all claims are rejected based upon the same references. The present restriction requirement effectively takes a contradictory position to the still outstanding rejection.

Applicant respectfully submits, therefore, that the restriction requirement is improper.

Furthermore, regarding PCT rules 13.1 and 13.2, the restriction action states that Group I and Group II "lack the same or corresponding special technical feature for the following reasons:

Group II's special technical feature is an AIM distribution terminal, means therefor, and method for receiving AIM's from a distributing authority, storing on the AIM distribution terminal and dispensing AIMs to mobile devices which is not present in Group I;

Group I's special technical feature is receiving AIMs to mobile device, therefrom to a CDU, where it is stored, then selecting a content item based on the stored AIM and a category associated with the content item, which is not present in Group II."

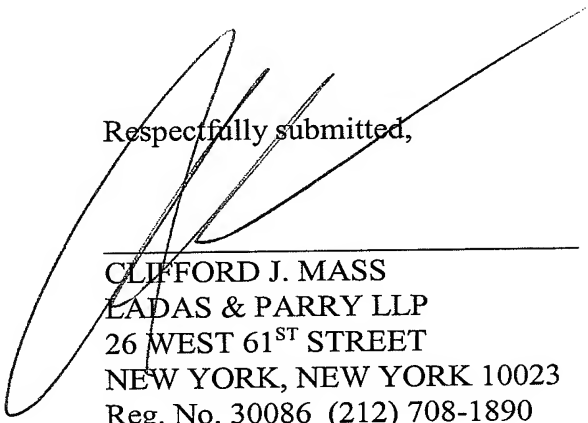
Applicant posits that the so-called "lock-and-key" principle is applicable here (see MPEP 1893.03(d), "For example, a corresponding technical feature is exemplified by a key defined by certain claimed structural characteristics which correspond to the claimed features of a lock to be used with the claimed key"). To wit, Group II comprises an AIM distribution terminal, means therefor, and so forth. Group I comprises the second side of the AIM environment, namely, the receiving of the AIM at a mobile device, and further using the AIMs.

Applicant reserves the right to pursue withdrawn claims 72, 95, and 106 in a divisional application if the restriction requirement is upheld.

In view of the foregoing remarks, it is respectfully submitted that the present application is now in condition for allowance. Favorable reconsideration and allowance of the present application are respectfully requested.

Please charge Account No.12-0425 for any fees which may be due by this paper.

Respectfully submitted,



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